

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

April 6, 2000 Session

JOHN W. JOHNSON v. CLAYBURN PEEPLES, ET AL.

Appeal from the Circuit Court for Gibson County
No. 7601 L. Terry Lafferty, Senior Judge

No. W2000-00067-COA-R3-CV - Filed April 24, 2001

Plaintiff filed a civil rights and conspiracy complaint against Gibson County District Attorney and Gibson County Sheriff, pursuant to 42 U.S.C. § 1981, 42 U.S.C. § 1983, 42 U.S.C. § 1985(3), and 42 U.S.C. § 1986. The trial court dismissed the complaint based on the statute of limitations, failure to establish facts sufficient to state a claim, and qualified immunity. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

John W. Johnson, *Pro Se*

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Ellen H. Pollack, Assistant Attorney General, Nashville, Tennessee, for the appellee Clayburn Peeples

Elizabeth E. Chance and Clinton J. Simpson, Memphis, Tennessee, for the appellee Gibson County Sheriff.

OPINION

This lawsuit originates from a longstanding dispute over access to a cemetery located on the land of Eva Johnson, the mother of Plaintiff/Appellant John W. Johnson ("Johnson"). Johnson has filed numerous lawsuits in both federal and state courts over whether distant relatives and others are entitled access to the cemetery. All of these lawsuits have been dismissed. Disagreements over access to the cemetery have escalated over the years, culminating in Johnson being convicted on two counts of aggravated assault in 1992. The assault convictions stem from an incident in which two deputies of the Gibson County Sheriff Department attempted to serve an attachment and warrant on Johnson after he refused to allow Jordan Johnson and a salesman from Sears access to the cemetery. *See State v. Johnson*, No. 02C01-9212-CC-0282, 1994 WL 29839 (Tenn. Crim. App. Feb. 2, 1994).

Johnson obtained a shotgun from his truck and “swung” it towards the deputies, ordering them off his property. *Id.* Johnson’s convictions were affirmed on appeal. *Id.*

In March 1999, Johnson filed a civil rights and conspiracy lawsuit pursuant to 42 U.S.C. §§ 1981, 1983, 1985(3) and 1986 against the Gibson County Sheriff as well as Clayburn Peeples (“Peeples”). In his complaint, Johnson asserts that the Gibson County Sheriff’s Department engaged in actions which prevented him from entering his mother’s land, allowed others to illegally enter the land, and conspired with Peeples to change the land’s property boundaries and terrain. After hearing arguments, the trial court dismissed Johnson’s complaint. The trial court found that several of Johnson’s allegations were barred by the statute of limitations. Finding Johnson’s remaining allegations to be nonspecific and conclusory in nature, the trial court dismissed the remainder of the complaint as failing to allege facts sufficient to state a claim upon which relief could be granted. Citing *Poe v. Haydon*, 853 F.2d 418 (6th Cir. 1988), the trial court also concluded that the Gibson County Sheriff was entitled to qualified immunity because Johnson failed to set forth facts showing a violation of constitutional rights that was “so clearly established when the acts were committed that any official in the defendant’s position, measured objectively, would have clearly understood that he was under an affirmative duty to refrain from the conduct.” From this order, Johnson now appeals.

On appeal, Johnson contends that the trial court erred in finding that several of his claims were barred by the statute of limitations. He asserts that, when taken as a whole, the separate allegations evidence a continuing pattern of civil rights violation and conspiracy on the part of Peeples and the Gibson County Sheriff. Similarly, Johnson contends that, when taken as a whole, the separate allegations provide facts sufficient to state a claim. Johnson also argues that the trial court erred in dismissing his complaint against the “Gibson County Sheriff” based on qualified immunity. Noting that the complaint does not list an individual’s name but reads Gibson County Sheriff, Johnson asserts that qualified immunity is inappropriate because it is available only to individual officials, not to local governments.

In reviewing a trial court’s grant of a motion to dismiss, all factual allegations are taken as true and the trial court’s conclusions of law are reviewed *de novo* without a presumption of correctness. *See* Tenn. R. App. P. 13(d); *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999). A motion to dismiss for failure to state a claim tests the legal sufficiency of the plaintiff’s complaint and should be granted only if the allegations in the plaintiff’s complaint, even if taken as true, fail to state a claim upon which the plaintiff would be entitled to relief. *Riggs v. Burson*, 941 S.W.2d 44, 47 (Tenn. 1997); *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997).

Under Section 28-3-104(a)(3) of the Tennessee Code Annotated, civil actions for civil or punitive damages, or both, brought under the federal civil rights statutes must be commenced within one year after the cause of action accrues. Tenn. Code Ann. § 28-3-104(a)(3) (2000). In Sections 8, 9, 10, 11, and 12 of his complaint, Johnson alleges that Peeples and/or the Gibson County Sheriff engaged in activities which violated his civil rights. Each alleged violation occurred more than one year before Johnson filed his complaint on March 17, 1999. In his brief, Johnson argues a quasi-

continuing violation theory, contending that the allegations should be viewed as continuing wrongs, rather than as separate violations which give rise to separate causes of action. Based on this theory, since the most recent alleged violations occurred on September 8-9, 1999, Johnson's complaint would fall well within the one-year limitations period. The continuing violations doctrine has been applied in Tennessee in a few situations, such as in some employment discrimination suits. *See Owens v. University Club of Memphis*, No. 02A01-9705-CV-00103, 1998 WL 719516, (Tenn. Ct. App. Oct. 15, 1998) (applying continuing violation doctrine to case in which employer continually withheld employee's tips, noting that application of the doctrine was proper because of case's similarity to an employment discrimination case). We find that application of the continuing violation theory would be inappropriate in this case, and affirm the trial court's dismissal of certain of Johnson's claims based on the statute of limitations.

Johnson's remaining allegations occurred within the one-year statute of limitations, but were dismissed as failing to state facts sufficient to state a claim upon which relief can be granted. Under the federal civil rights statutes, the plaintiff must allege facts sufficient to establish that the defendant's actions caused him to be deprived of a constitutional right and that the action was taken under the color of law. Conclusory, nonspecific allegations in a plaintiff's complaint are not sufficient to state a cause of action for a violation of constitutional rights. *Veney v. Hogan*, 70 F.3d 917, 922 (6th Cir. 1995). Similarly, a claim of conspiracy must be pled with some degree of specificity. *Gutierrez v. Lynch*, 826 F.2d 1534 (6th Cir 1987).

Johnson alleges that on September 8, 1999, he was unlawfully incarcerated and that on September 9, 1999, he was taken by the Gibson County Sheriff to his mother's property. Even when viewed in the light most favorable to Johnson, these facts are insufficient to establish that Johnson's civil rights were violated or that Peebles and the Gibson County Sheriff engaged in a conspiracy to deprive Johnson of his constitutional rights. As noted by the trial court, Johnson fails to set forth facts establishing "how his incarceration was unlawful, by whom he was incarcerated, where he was when incarcerated, what law enforcement agency incarcerated him, or in what lawful behavior he was engaged when incarcerated." He fails to set forth any facts establishing how being taken to his mother's property by the sheriff's department was unlawful or a violation of his constitutional rights. Though he alleges a conspiracy to deprive him of his land, he includes no alleged facts regarding who participated in the alleged conspiracy or when and how the alleged conspiracy took place. Rather, he vaguely asserts that "[t]hese Defendants [reached] an understanding [and an] agreement to accomplish an unlawful act, by unlawful means with a common design" and makes further nonspecific and vague statements of unnamed "Defendants" altering boundary lines and terrain. Consequently, we find that the trial court properly dismissed the remainder of Johnson's complaint for failure to state a claim.

Johnson asserts that the trial court erred in finding that the Gibson County Sheriff was entitled to qualified immunity. Once the Gibson County Sheriff asserted the defense of qualified immunity, Johnson had the burden of asserting facts sufficient to show that the violation of constitutional rights was "so clearly established when the acts were committed that any officer in the defendant's position, measured objectively, would have clearly understood that he was under an

affirmative duty to [refrain] from the conduct.” *Poe*, 853 F.2d at 425. The allegations in Johnson’s complaint were conclusory and devoid of material facts and he proffered no additional allegations or facts. Johnson’s contention that the finding of qualified immunity was erroneous because the suit was filed against the Gibson County Sheriff rather than a named individual is also without merit. Consequently, we affirm the trial court’s decision on this issue.

The decision of the trial court is affirmed. Costs are taxed to the appellant, John W. Johnson and his surety, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, J.